

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING
FOAMS PRODUCTS LIABILITY
LITIGATION**

MDL No. 2:18-mn-2873-RMG

**This Document Relates to
ALL CASES**

**UNITED STATES OF AMERICA’S OMNIBUS MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendant United States of America (hereinafter, “United States”) moves to dismiss tort claims brought in the following actions against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 (“FTCA”):

1. *B&B Inv. Props. v. United States*, No. 2:19-cv-01120
2. *Cal. Am. Water v. United States*, No. 2:20-cv-00834
3. *City of Airway Heights v. United States*, No. 2:20-cv-01763
4. *City of Dayton v. United States*, No. 2:21-cv-02627
5. *City of DuPont v. United States*, No. 2:21-cv-03284
6. *City of Newburgh v. United States*, No. 2:18-cv-03358
7. *City of Westfield v. United States*, No. 2:18-cv-03435
8. *County of Suffolk v. United States*, No. 2:19-cv-01181
9. *County of Westchester v. United States*, No. 2:19-cv-01724
10. *Dorene Dairy Gen. P’ship v. United States*, No. 2:20-cv-04263
11. *Elsinore Vall. Mun. Water Dist. v. United States*, No. 2:21-cv-0369
12. *Fiattarone v. United States*, No. 2:19-cv-01119
13. *H54b Inc. DBA Moose Creek v. United States*, No. 2:19-cv-01217
14. *Kalispel Tribe v. 3M Co.*, No. 2:20-cv-01398
15. *Lakewood Water Dist. v. United States*, No. 2:20-cv-02899
16. *Newkirk v. United States*, No. 2:24-cv-00077
17. *New York v. 3M Co.*, No. 2:19-cv-01022
18. *New York v. 3M Co.*, No. 2:19-cv-02607
19. *Nyvchik v. United States*, No. 2:23-cv-00313
20. *O’Brien v. United States*, No. 6:22-cv-01001
21. *Schaap v. United States*, No. 2:19-cv-03288
22. *Security Water District v. United States*, No. 2:19-cv-02187
23. *Teune v. United States*, No. 2:19-cv-03290

24. *Town of New Windsor v. United States*, No. 2:21-cv-01496
25. *Vander Dussen v. United States*, No. 2:20-cv-04191
26. *Village of Waterloo v. United States*, No. 2:22-cv-02368
27. *Wash. State Dep't of Corrs. v. United States*, No. 2:20-cv-02030¹

In these cases, Plaintiffs challenge the United States military's use and handling of Aqueous Film Forming Foam ("AFFF") since the 1970s, contending that the AFFF contaminated their water with "forever chemicals" collectively known as "PFAS." However, under the FTCA's Discretionary Function Exception, 28 U.S.C. § 2680(a) ("DFE"), the United States retains immunity from claims challenging discretionary government conduct that is susceptible to policy analysis. Here, the military exercised considerable discretion to use and handle AFFF, and its decisions were imbued with sensitive policy considerations. As such, the FTCA's DFE bars Plaintiffs' FTCA claims against the United States.

In support of this Omnibus Motion to Dismiss, the United States submits and relies upon its accompanying Memorandum in Support, Appendix, and Exhibits.

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¹ The United States is presently aware of 30 cases pending against it in the AFFF MDL, 27 of which bring tort claims.

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2024, a copy of the foregoing was filed via the Court's ECF system and served on counsel of record through the ECF system.

Dated: February 26, 2024

/s/ Christina Falk
CHRISTINA FALK